**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**APPELLATE SIDE CIVIL JURISDICTION**

FIRST APPEAL NO.1308 OF 2005
WITH C.A.NO.2906/2005 AND C.A.NO.3289/2005

Suresh Lotalikar. ...Appellant.
Vs.
Municipal Corpn. of Greater Bombay.
....Respondent.

Mr. A.M.Vernekar for Mr. J.M.Chodankar for the Appellant.

Mr.R.A.Thorat with S.A. Bhagwat for Respondent No.2.

**CORAM : R.S. MOHITE, J.**
**DATED : 8/8/2005.**

**P.C.:**

1. This is an appeal filed by the original plaintiff against the Judgment and decree passed in L.C. Suit No.158 of 2003 transferring the suit property namely Lotalikar building situated at Chira Bazar, Mumbai in the name of his real brother i.e. defendant No.2. In the course of the trial, when stand was taken on behalf of the defendants that the defendant No.2 had purchased the property in auction dated 18.11.1982, the prayer was added for declaration that the payment of auction dated 18.11.1982 of the suit property is bad in law being

a benami transaction. The Trial Court has given the cogent reasons as to why the said suit could not be decreed. It has been observed by the trial court that neither the plaintiff nor the defendant produced any record with regard to the auction sale and thus there was no material before the court to find out as to who was the highest bidder and in whose favour sale certificate has been issued. The plaintiff has come out with the case that the defendant no.2 has no title or that the transaction was benami transaction. The burden was clearly on the plaintiff to prove his case by leading cogent and convincing evidence. However, the plaintiff failed to do so. It was argued that as defendant failed to lead evidence, adverse interference be drawn. In my view, the aforesaid argument has been rightly rejected by the trial court as the burden of proving his case was on the plaintiff. I am informed that the advocate for the appellant that the suit of partition of the properties belonging to the father of the plaintiff and defendant no.2 has already been filed. Be that as it may, in my view, there is no infirmity in the order passed by the Trial Court and hence, the first appeal is rejected.

CIVIL APPLICATION NO.2906/2005

1. As the first appeal has been rejected on merits and therefore, present civil application does not survive. Hence, rejected.

CIVIL APPLICATION NO.3289/2005

1. This is an application filed on behalf of the original appellant in which prayer is made for deletion of prayer clause (a) in the plaint and addition of prayers (a-1) to (a-5). On perusal of these prayers, it is clear that the proposed amendment which is sought to the plaint will completely change the nature of the suit. Such a prayer cannot be granted after the suit has been decided on the basis of the original prayer clause (a) which is now sought to be deleted. In the first appeal, I find that there is no merit and accordingly, I dismissed the same. In the circumstances, this civil application stands rejected.

**(R.S. MOHITE, J.)**